



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Sterling Supply Corporation
File: B-224298
Date: January 6, 1987

DIGEST

1. Navy contracting activity properly rejected the protester's low bid signed by retired naval officer because the retired naval officer's signing of the bid constituted a sale to the government which violated criminal statute precluding retired officer's representation in any sale to the Navy.
2. A protest which merely anticipates possible future agency action is speculative and will not be considered.

DECISION

Sterling Supply Corporation (Sterling) has protested against award to any other bidder under invitation for bids (IFB) No. N00250-86-B-0073, issued by the Navy Resale Services Support Office, Fort Wadsworth, New York, for laundry and dry cleaning supplies.

Sterling's low bid was signed by "R.R. Clement-Vice President" without any designation of Mr. Clement's status as a retired (since 1973) regular Naval officer. However, once the Navy learned of Mr. Clement's status, it subsequently decided that Sterling's bid could not be accepted. Specifically, the Navy found that Mr. Clement, through his signing of the bid, had apparently violated 18 U.S.C. § 281 (1982)^{1/}, which provides a fine of up to \$10,000 and an imprisonment of not more than two years, for those "retired officers" who "represent any person in the sale of anything to the Government through the department in whose service [the officer] holds a retired status." Given the Navy's

^{1/} The provisions of 18 U.S.C. § 281 have been repealed to an extent, but the law remains applicable to retired military officers.

finding, which it thereafter referred to the Department of Justice (DOJ) for consideration, the Navy excluded Sterling's bid from consideration for award.

We deny the protest in part and dismiss it in part.

The protester asserts that the retired officer's signing of the bid did not violate the criminal statute, since it was not a "sale" under the statute. The protester also submits the affidavit of the retired officer indicating that his participation in the bidding procedure was limited solely to the signing of this bid. The retired officer specifically represents that he had no communications with the Navy concerning the bid, and to the best of his knowledge is not acquainted on a personal or business basis with the Navy contracting personnel involved in this contract.

We think the Navy properly rejected Sterling's bid. Under decisions of this Office concerning similar statutory language, we have concluded that signing a bid constitutes selling to the government. See, e.g., 53 Comp. Gen. 616 (1974) and 42 Comp. Gen. 87 (1962). Thus, Mr. Clement's signing of Sterling's bid constituted a violation of 18 U.S.C. § 281, which prohibits retired officers from representing any person in the sale of anything to the department in whose service the officer holds retired status.

The protester refers to a letter dated November 30, 1981, from the Assistant Attorney General to the Chief of the Litigation Division of the Department of the Army, concerning DOJ's interpretation and enforcement of 18 U.S.C. § 281. In this letter, DOJ states that prosecution under this statute would not ordinarily be undertaken in the absence of "venal conduct" and also states that while most of the matters involving the statute "can be effectively dealt with administratively, nonetheless an aggravated case could warrant criminal prosecution." The protester suggests that DOJ's position indicates that it would not prosecute in this situation and thus the Navy has no reasonable basis to reject Sterling's bid. We view DOJ's decision whether or not to prosecute Mr. Clement under this statute to be a separate matter from the issue of whether or not the Navy can reject this bid as an administrative remedy for what clearly is a technical violation of the statute. The statement quoted above from the DOJ letter in fact appears to recognize the agency's right to take such administrative action.

Thus, in our view, the Navy properly found Mr. Clement's signing of Sterling's bid was a violation of the statute and, consistent with the purpose of the statute, properly rejected Sterling's bid. We deny this aspect of Sterling's protest.

Sterling also protested award to M.A. Notch Corporation, the bidder next in line for award, on the ground that Mr. Notch apparently is a retired Navy reserve officer and an award would create an appearance of impropriety. Since no award has been made, or will be made until this decision is issued, Sterling is anticipating agency action. Thus, its protest against a future award to Notch is speculative and accordingly is dismissed. Servicemaster All Cleaning Services, Inc., B-223355, Aug. 22, 1986, 82-2 C.P.D. ¶ 216.

We dismiss the protest in part and deny it in part.

Harry R. Van Cleve

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